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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

FONTANA POLICE OFFICERS  
ASSOCIATION et al.,

Plaintiffs and Appellants,

v.

CITY OF FONTANA,

Defendant and Respondent.

E048147

(Super.Ct.No. CIVSS701856)

OPINION

APPEAL from the Superior Court of San Bernardino County. Joseph R. Brisco,  
Judge. Affirmed.

Lackie Dammeier & McGill, Michael A. McGill and Russell M. Perry for  
Plaintiffs and Appellants.

Gresham Savage Nolan & Tilden, J. Michael Summerour and Bradley E. Neufeld  
for Defendant and Respondent.

This is an appeal by Fontana Police Officers Association, Fred Flores, Charles  
Wideen, and Matthew Tyson, plaintiffs and appellants (hereafter collectively referred to

as Association or individually referred to by last name) from the trial court's order denying their petition for writ of mandate seeking to compel defendant and respondent City of Fontana (hereafter City) to provide certain retirement benefits to all of its police officers without regard to the specific bargaining unit in which the police officer is a member, as allegedly required by Government Code section 20479.<sup>1</sup> We conclude the trial court correctly denied the writ petition and therefore we will affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Association filed its verified writ petition on May 24, 2007. In that petition it alleged, in pertinent part, that Flores, Tyson, and Wideen are retired City police officers and members of the Fontana Police Officers Association (FPOA), one of two bargaining units for City police officers. The other bargaining unit, the Fontana Police Management Association (FPMA), is comprised of police officers at the rank of sergeant or higher. City has separate memoranda of understanding (MOU) with each of the two bargaining units. City contracts with CalPERS to provide retirement benefits for City employees, including police officers.

Association alleged in its petition that City pays each police officer's member contribution toward retirement, known as an Employer Paid Member Contribution (EPMC), equal to nine percent of the employee's salary, as authorized by section 20691. In accordance with an MOU between City and the FPMA, effective January 2005, City

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<sup>1</sup> All further statutory references are to the Government Code unless indicated otherwise.

agreed to report the EPMC to CalPERS as additional compensation for purposes of calculating the FPMA members' monthly benefit at the time of retirement. In order to implement the agreement with the FPMA City passed the requisite resolution. CalPERS approved the resolution, and as of January 1, 2005, City has reported to CalPERS the value of the EPMC as additional compensation for FPMA members. City entered into a similar MOU with FPOA members in August 2005 and that agreement became effective on August 20, 2005.

Association alleged that Flores, Wideen, and Tyson are each FPOA members who retired in January 2006, August 2006, and September 2005, respectively, and that as a result of the agreement with FPMA members, Flores, Wideen, and Tyson each received a lower monthly retirement benefit than that received by members of the FPMA who retired at the same time. That disparate treatment, Association alleged, violates section 20479, which Association alleged "prohibits a public employer from contracting with PERS and providing retirement benefits 'for some, but not all members of the following membership classes: . . . local police officers.' Section 20479 was enacted to prevent the employer from treating similarly situated employees, such as local police officers, differently with regard to retirement benefits provided as terms and conditions of employment."

After City filed its answer, denying the material allegations of the writ petition, Association filed a noticed motion with supporting memorandum of points and authorities, declarations, and judicial notice requests. City filed its opposition, which

included the supporting declaration of Edward S. Raya, City's human resources director. Following a hearing on March 19, 2009, at which the trial court granted in part Association's request for judicial notice of various documents and also ruled on each parties' objections to their opponent's supporting declarations, the trial court denied the writ petition. Association appeals from the judgment subsequently entered.

### **DISCUSSION**

Association contends as it did in the trial court that section 20479 prohibits City from crediting the value of EPMC as pensionable compensation for FPMA members sooner than for FPOA members. At the time pertinent to this appeal, section 20479 stated: "Notwithstanding any other provision of law, including, but not limited to, Chapter 10 (commencing with Section 3500) Division 4 of Title 1, no contract or contract amendment shall be made to provide any retirement benefits for some, but not all members of the following membership classifications: local miscellaneous members, local police officers, local firefighters, county peace officers, local sheriffs, or local safety officers. [¶] No contract or contract amendments shall provide different retirement benefits for any subgroup, including, but not limited to, bargaining units or unrepresented groups, within those membership classifications. [¶] This section does not preclude changing membership classification from one membership classification to another membership classification or exclusion of groups of members by contract. [¶] For

purposes of this section, ‘benefit’ shall not be limited to the benefits set forth in Section 20020.”<sup>2</sup>

According to Association, section 20479 requires that all police officers receive the same retirement benefits without regard to bargaining unit and therefore the value of the EPMC benefit must be reported at the same time for all city police officers.

City in turn argues that section 20479 by its express terms applies only to benefits provided by a contract, or contract amendment, between City and CalPERS. The benefit at issue here, namely the monetary value of EPMC, is authorized under sections 20636, subdivision (c) and 20691, and not pursuant to a contract or contract amendment between City and CalPERS. Therefore, City contends section 20479 is inapplicable here.

In their reply brief Association argues that section 20479 is applicable because the term “contract” refers to the contract between City and its employees, which in this case is the MOU between the FPMA and City. Because that MOU conferred benefits on the FPMA that were not also available to FPOA members, that agreement violated section 20479.<sup>3</sup>

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<sup>2</sup> Section 20479 was amended in 2009 to add school safety members to the first paragraph.

<sup>3</sup> Association’s real issue is with the fact that the individual plaintiffs did not receive the full nine percent value of the EPMC at the time they each retired. In fact, Tyson did not receive the benefit at all. They alleged this issue in their writ petition, but it was not resolved in the trial court and they do not assert it on appeal. The reason the individual appellants did not receive the full nine percent additional compensation is explained in the declaration of City’s Human Resources Director, Edward Raya, which City submitted as part of its filings in opposition to the writ petition: “CalPERS pays retirement benefits based on reported earnings. In order to receive the maximum benefit

*[footnote continued on next page]*

## STANDARD OF REVIEW

Because the facts are undisputed and the only question involves interpretation of section 20479, we independently review that issue. “As the matter is a question of law, we are not bound by evidence on the question presented below or by the lower court’s interpretation. [Citations.]” (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.)

## ANALYSIS

“The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] ‘In determining intent, we look first to the language of the statute, giving effect to its “plain meaning.”’ [Citations.] Although we may properly rely on extrinsic aids, we should first turn to the words of the statute to determine the intent of the Legislature. [Citation.] Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. [Citation.]” (*Burden v. Snowden, supra*, 2 Cal.4th at p. 562.)

Section 20479 states in pertinent part that “no contract or contract amendment shall be made to provide retirement benefits” to some but not all members of specified

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of the EPMC, employees must work at least one year after implementation of the EPMC as reportable compensation. FPMA employees were therefore required to work until January 2006, and FPOA employees were required to work until August 2006, in order to receive the full value of the EPMC additional compensation benefit for retirement purposes.” Employees who worked less than 12 months after adoption of the EPMC conversion benefit received the benefit on a prorated basis.

membership classifications including local police officers, or any “subgroup” of the specified membership classifications, and that subgroup includes bargaining units.

The term “contract” is unclear. As noted previously, Association contends the term “contract” refers to the labor contract or MOU between the employer, in this case the City, and the employee bargaining unit. Under Association’s interpretation, City could not enter into an MOU with the FPMA to provide retirement benefits to its members without also providing those same benefits to FPOA members (and vice versa) because FPMA and FPOA are subgroups of the membership classification of local police officers. In other words, Association contends section 20479 requires City to offer the same retirement benefits to both bargaining units of its police officers.

City on the other hand contends that “contract” as used in section 20479 means the agreement between City, as the agency contracting for retirement services, and CalPERS, the entity providing those services. We agree with City.

To support its argument City first notes that section 20479 is included in Title 2, entitled “Government of the State of California,” Division 5, entitled “Personnel,” Part 3, entitled “Public Employees’ Retirement System,” Chapter 5, entitled “Contract Members of System,” Article 1, entitled “General Provisions,” of the Government Code. In arguing against City’s interpretation, and thus against the interpretation we adopt in this opinion, Association cites the Legislative history of former section 20466, the predecessor to section 20479. Section 20466, added by Statutes 1988, chapter 390, section 2, stated, “Notwithstanding any other provision of law, including, but not limited

to, the Meyers-Milias-Brown Act (Chapter 10, commencing with Section 3500) of Division 4 of Title 1), no contract or contract amendment shall be made to provide any retirement benefits for some but not all members of the following membership classifications: . . . local policemen . . . [¶] No contract or contract amendments shall provide different retirement benefits for any subgroup, including, but not limited to, bargaining units or unrepresented groups, within those membership classifications.”

In enacting section 20466, the Legislature stated, “It is the intent of the Legislature in enacting Section 2 of this act to prevent any employer or employee group of any type or any other party from relying on the unpublished appellate case of *Redondo Beach Supervisory and Management Association v. Board of Administration, Public Employees’ Retirement System* (2d [Dist., Div. 3,] Civ. No. B015585 [sic]).<sup>[4]</sup> The intent of Section 2 of this act [the provision pertaining to section 20466] is to prevent all future application of that decision, or reliance on the reasoning therein, on any basis or for any reason whatsoever, except in written memoranda of understanding entered into by an employer and representatives of employees or by minute order, resolution, or ordinance adopted by the legislative body, on or before August 1, 1988, or the effective date of this section, whichever is later.” (Stats. 1988, ch. 390, § 5.)

*Redondo Beach Supervisory etc. Ass’n v. Board of Administration* (Oct. 22, 1986, B015584 [nonpub. opn.] (*Redondo Beach*)) involved providing an employee with credit at the time of retirement for unused sick leave pursuant to then-section 20862.8, which

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<sup>4</sup> The correct case number is B015584.



expressly stated that the “section shall not apply to any contracting agency nor to the employees of any contracting agency *unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts . . .*” (*Redondo Beach, supra*, B015584, emphasis added.) The City of Redondo Beach had entered into an MOU with one of its two police officer bargaining units to provide the section 20862.8 benefit, but the CalPERS board refused to amend its contract with the city. In the trial court, “The Board reasoned: such an amendment cannot be made on behalf of less than all of the ‘local policemen’ employed by the City.” (*Redondo Beach, supra*, B015584.) On appeal, the Board argued that the City of Redondo Beach did not have authority either by statute or from any other source to provide the benefit to some but not all of its police officers. (*Ibid.*) The trial court granted the police officers’ writ to compel the board of CalPERS to provide the benefit in accordance with the MOU. On appeal, the court affirmed the judgment. The Legislature enacted section 20466 in response.

In this case, the benefit at issue is authorized by section 20691 which states, “Notwithstanding any other provision of law, a contracting agency or school employer may pay all or a portion of the normal contributions required to be paid by a member. Where the member is included in a group or class of employment, the payment shall be for all members in the group or class of employment.”<sup>5</sup> Under section 20636,

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<sup>5</sup> Section 20636, subdivision (e)(1) defines, “‘group or class of employment’” as “a number of employees considered together because they share similarities in job duties,  
[footnote continued on next page]

subdivision (c)(4) “the full monetary value of normal contributions paid to the board by the employer, on behalf of the member and pursuant to section 20691,” is special compensation “if the employer’s labor policy or agreement specifically provides for the inclusion of the normal contribution payment in compensation earnable.” Section 20636, subdivision (a) defines “compensation earnable,” by a member as the member’s payrate and special compensation. “Final compensation” which is the basis for calculating a member’s monthly retirement allowance, means the member’s highest compensation earnable. (§ 20037.) Unlike the benefit included in former section 20862.8, at issue in *Redondo Beach*, none of the sections cited above, and at issue in this case, requires amendment of City’s contract with CalPERS in order for the benefit to be effective. Therefore, we conclude that section 20479 is not applicable to the EPMC at issue in this case, and the trial court correctly denied Association’s petition for writ of mandate.

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*[footnote continued from previous page]*

work location, collective bargaining unit, or other logical work related grouping. One employee may not be considered a group or class.”

## DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to defendant and respondent City of Fontana.

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/s/ McKinster  
Acting P.J.

We concur:

/s/ King  
J.

/s/ Miller  
J.